DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

BOWMAN *v.* NEWTON et al.

Jan. 22, 1920.

[101 S. E. 882.]

Vendor and Purchaser (§ 172*)—Purchaser Taking Possession Prior to Settlement Liable for Interest.—The purchaser of land involved in partition suit under contract composed of his proposal and the approving decree of the court, both silent as to the subjects of interest on the purchase price and time for taking possession, is liable for interest on the unpaid purchase money from the date on which he took possession, prior to the time fixed by the contract for settlement.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 513.]

Appeal from Circuit Court, Norfolk County.

Suit for partition by George F. Newton against the estate of W. L. Newton and others, wherein W. E. Bowman offered to purchase the land involved, and, from decree holding him for interest on the unpaid purchase money from the time he took possession, he appeals. Affirmed.

S. Burnell Bragg and *Thomas W. Shelton,* of Norfolk, for appellant.

E. R. F. Wells, of Norfolk, for appellees.

GILLS *v.* GILLS et al.

Jan. 22, 1920.

[101 S. E. 900.]

1. Equity (§ 422*)—Decree Removing Guardian and Requiring Him to Account Held Final, though Guardian Failed to Answer.—In a suit to require a guardian to account, and for his removal and for a judgment requiring the guardian and his surety to pay over to the guardian's successor all sums due, a decree granting such relief and confirming a commissioner's report, stating the guardian's account, held final and conclusive upon the guardian, notwithstanding that neither the guardian nor his surety appeared before the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

commissioner as required, or at the hearing of the suit, although both had been served with summons.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 792.]

2. Equity (§§ 392, 460*)—Petition for Rehearing after Final Judgment against Guardian Construed as Bill of Review.—Where a final decree had been rendered, removing guardian and requiring him to account and confirming a commissioner's report stating the account, neither the guardian nor his surety having appeared before the commissioner, or answered in the suit, petitions by the guardian and the surety for a rehearing to allow them to present defenses must be considered as bills of review, and not as petitions for rehearing, in view of Code 1904, § 3451.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 386.]

3. Equity (§ 460*)—Bill of Review by Guardian Alleging Omissions by Commissioner in Stating His Account Insufficient to Show Error on the Face of the Record.—Where a final decree against a guardian and his surety, removing the guardian and requiring him to account and pay over all amounts due to his successor, was entered on confirmation of commissioner's report stating the account, at which neither the guardian nor his surety had appeared, a bill of review alleging the commissioner's failure in stating the account to allow the guardian certain items of credit for expenses, which existed prior to the stating of such account, and which the guardian neglected to assert before the commissioner, did not show error on the face of the record, being dependent upon extrinsic evidence, which had not been produced.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 391, 392.]

4. Equity (§ 419*)—Final Decree Pro Confesso Removing Guardian and Requiring Him to Account Is Not Reversible or Amendable under Statute.—A final decree removing a guardian and requiring him to account, entered on the confirmation of a commissioner's report upon a bill taken for confessed, cannot be reversed or amended either by the court below or by the appellate court by virtue of any statutory authority, notwithstanding Code 1904, § 3451.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 391, 392.]

5. Equity (§ 445*)—Guardian's Surety Could Not Maintain Bill to Review Decree Confirming Commissioner's Account Stated in the Absence of Exceptions to Report.—Where a final decree has been entered against a guardian and his surety removing the guardian and requiring him to account and to pay over amounts due as found by the commissioner to his successor, the surety, having been personally served, could not by bill of review bring the case again before the court, on the ground that it had no notice of the taking of the

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account before the commissioner, where it had not excepted to his report prior to the entry of the decree.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 833.]

6. Equity (§ 446*)—Guardian's Surety Cannot Maintain Bill to Review Decree on Commissioner's Account Stated for Mistake in Guardian's Favor.—That a commissioner in stating a guardian's account failed to adopt a rest day, and intermingled principal and interest, did not constitute error on the face of the record for which the guardian's surety could maintain a bill of review, where the account as stated was more favorable to the guardian, and therefore to the surety, than if it had been correctly stated.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 391, 392.]

7. Guardian and Ward (§ 54*)—Guardian Properly Chargeable with Interest on Balance Due on Removal, Including Both Principal and Interest.—A decree confirming a commissioner's account stated relative to accounting by a guardian, requiring the guardian to pay interest from the date of his removal on the balance in his hands as of that date, was not erroneous, although the balance consisted of interest as well as principal; the guardian being chargeable with compound interest as of that date under Code 1904, § 2606, although there could be no subsequent rest day after the termination of the guardianship.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 829.]

Appeal from Circuit Court, Campbell County.

Action by Mary E. Gills and others, by next friend, against John W. Gills and the United States Fidelity & Guaranty Company. Judgment for defendants after rehearing and re-reference, and plaintiffs appeal. Reversed and remanded.

H. C. Featherston, of Lynchburg, for appellants.

Caskie & Caskie, of Lynchburg, and *Frank Nelson,* of Rustburg, for appellees.

TOWSON *v.* TOWSON.

Jan. 22, 1920.

[102 S. E. 48.]

1. Jury (§ 18*)—Property Impaneled to Try Issues Made by Plea to Jurisdiction in Divorce.—In a divorce case, where defendant filed pleas to the jurisdiction, to the effect that plaintiff had not been domiciled a year in the state before bringing the action, and issue was taken thereon, court did not err in impaneling a jury to try the issues on the pleas to the jurisdiction, in view of Code 1904, § 3274,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.